

# **TERMS AND CONDITIONS**

## **PIER GRANTS**

**AWARD #     -     -**



## TERMS AND CONDITIONS

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## TERMS AND CONDITIONS

### 1. GRANT AGREEMENT

This project is being funded with a grant from the California Energy Commission (Commission). Funding for this project was authorized by Senate Bill No. 90, Chapter 905, Statutes of 1997, and consists of funds from the Public Interest Research, Development, and Demonstration Fund, appropriated through \_\_\_\_\_.

**Program** refers to the entire effort undertaken and planned by the recipient including the work co-funded by the Commission. The project may coincide with or extend beyond the grant period. **Project** refers to the work elements of the program. Typically, there are distinct projects within the program being paid for by the Commission under this grant.

This agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for Public Interest Energy Research (PIER) grant awards. The Commission may impose additional special conditions in this grant agreement which address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

The recipient shall sign all six copies of this agreement and return five signed packages to the Commission's Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the recipient. The recipient also must provide written documentation that a separate ledger account or fund has been established by the recipient for receipt and disbursement of Commission funds.

Commission-funded work cannot begin prior to the agreement term date. This agreement is not effective until it is signed by all parties.

### 2. ATTACHMENTS AND REFERENCES

The following are attached and hereby expressly incorporated into this agreement.

- Work Statement
- Budget
- Resolution of the Recipient or Local Jurisdiction Governing Body (if applicable)
- Resolution of the California Energy Commission (if applicable)

The following checked items are attached and hereby expressly incorporated.

\_\_\_\_ Intellectual Property Exhibit  
\_\_\_\_ Special Conditions

\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_ None

The Office of Management and Budget (OMB) Circulars and/or federal regulations checked below are incorporated by reference as part of this agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations checked below. OMB Circulars may be accessed on the OMB web site at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html) or by calling the Office of Administration, Publications Office, at (202) 395-7332.

\_\_\_\_\_ Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

\_\_\_\_\_ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations  
(also applicable to private entities)

\_\_\_\_\_ 10 CFR Part 600: DOE Financial Assistance Regulations  
([www.pr.doe.gov/f600toc.html](http://www.pr.doe.gov/f600toc.html))

\_\_\_\_\_ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments

\_\_\_\_\_ OMB Circular A-21: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education (public and private colleges and universities)

\_\_\_\_\_ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)

\_\_\_\_\_ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations

\_\_\_\_\_ Title 48 CFR, Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)  
([www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html))

\_\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_ None



3. FUNDING LIMITATIONS

Any federal, state, and local laws and regulations applicable to your project not expressly listed in this agreement are incorporated herein as part of this agreement.

The funding source(s) and applicable restriction(s) checked below apply to this grant:

\_\_\_\_\_ Funding for this agreement is dependent upon a federal grant agreement which is scheduled to terminate on \_\_\_\_\_. Funding for this agreement is subject to the approval of the applicable federal government agency, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this agreement.

\_\_\_\_\_ EXXON SETTLEMENT  
Grant funds may not be used to reimburse indirect charges<sup>1</sup>.

\_\_\_\_\_ STRIPPER WELL SETTLEMENT  
Indirect charges<sup>1</sup> up to 5 percent are allowed if included in the grant budget.

\_\_\_\_\_ WARNER AMENDMENT  
Grant funds may not be used to reimburse indirect charges<sup>1</sup>.

\_\_\_\_\_ STATE ENERGY PLAN (SEP)  
Funding for this agreement is approved as part of the SEP annual grant. This grant terminates on June 30 of each year and must be extended annually. Grant funds may be used only as approved in the California SEP. Projects included in SEP may be required to submit annual energy savings reports.

\_\_\_\_\_ SUPPLANTING  
  
Grant funds may not be used to supplant (i.e., take the place of) previously budgeted funds for this project, whether recipient funds or funding from other grants. This includes budgeting for staff, contractors, or supplies. Funds may be used to supplement an existing budget.

\_\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_

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• • • <sup>1</sup> Indirect charges are those incurred for a common or joint purpose benefiting more than one activity. Examples would be office space rental, establishment and maintenance of the grant program, and preparation and maintenance of payroll and related wage records.

X   None

4. DUE DILIGENCE

The recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission Project Manager will periodically evaluate the schedule for completion of Work Statement tasks. If the Commission Project Manager determines (1) the recipient is not being diligent in completing the tasks in the Work Statement or (2) the time remaining in the funding award is insufficient to complete all project work tasks not later than the agreement term date, the Project Manager may recommend to the Policy Committee of the Commission (Committee) that this agreement be terminated, and the Committee may, without prejudice to any of its remedies, terminate this agreement.

5. PRODUCTS

Products are defined as any tangible item specified in the Work Statement. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the Commission's Accounting Office at the address below. The Accounting Office will forward products to the Commission Project Manager for review and comment. The recipient will submit an original and two copies of the final version of all products to the Accounting Office. If the Commission Project Manager determines a product is substandard, given the description and intended use of the product as described in the Work Statement and the grant application, the Commission Project Manager may refuse to authorize payment for the product and any subsequent products that rely upon or are based upon that product under this agreement.

California Energy Commission  
Accounting Office  
PIER Grant Program  
1516 Ninth Street, MS-2  
Sacramento, CA 95814

6. REPORTS

a. Submission of Reports

All reports will be submitted to the Accounting Office at the address listed in Section 5 above.

b. Quarterly Progress Reports

The recipient shall prepare quarterly progress reports. They are due to the Commission within 30 days after the end of the reporting period. The recipient shall prepare progress reports which summarize all grant activities conducted by the recipient for the reporting period, including an assessment of the ability to complete

the project within the current budget and any anticipated cost overruns. The Commission Project Manager will specify the report format, contents, and number of copies to be submitted. See Attachment 1, Progress Report Format.

c. Final Reports

A draft final report shall be submitted no later than 60 days prior to the end of the agreement term unless another timeframe is indicated in the Special Conditions or Work Statement. Unless indicated otherwise in the Work Statement or Special Conditions, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.
- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the grant recipient to maintain or further develop the project.
- A Payment Request form for the final payment (including any retention).
- A consolidated list of subcontractors funded in whole or in part by the grant recipient. Include the name, address, concise statement of work done, period, and value of each.

The Commission Project Manager will review the draft report. The recipient will incorporate applicable comments and submit the final report (the original and two copies).

Upon receipt of the final report, the Commission Project Manager shall ensure that all work has been satisfactorily completed.

d. Rights in Reports

The Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Commission.

e. Failure to Comply with Reporting Requirements

Failure to comply with the reporting requirements contained in this award will be considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards.

7. LEGAL STATEMENT ON REPORTS AND PRODUCTS

No product or report produced as a result of work funded by this program shall be represented to be endorsed by the Commission, and all such products or reports shall include the following statement:

**LEGAL NOTICE**

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This report has not been approved or disapproved by the Commission nor has the Commission passed upon the accuracy of the information in this report.

8. AMENDMENTS

Changes to the Work Statement, changes to specific line items in the budget, or both, may be made under certain conditions. Such changes must not alter the original scope or purpose of the project or program as proposed in the grant application. Such changes must not appreciably affect the value of the project or program. Recipient may reallocate between budget line items up to 15 percent (15%) of the total budget, with prior written notification to the Commission Project Manager. Work Statement changes and/or cumulative transfers among budget line items that exceed 15 percent of the grant award require advance written approval of the Commission Project Manager, Program Team Lead, and Grants and Loans Office. Changes to add new line item categories or travel also require advance written approval as well as changes to key personnel or key subcontractors (see Section 10, Key Personnel and Key Subcontractors). All requests must be submitted directly to the Commission Project Manager in writing and include a description of the proposed change, revised attachment(s), and the reasons for the change. If the change is approved, the affected sections of the agreement will be amended and signed by the Commission Project Manager, Grants and Loans Office, and the recipient's authorized representative.

9. CONTRACTING AND PROCUREMENT PROCEDURES

This section provides general requirements for an agreement between the recipient and a third party ( subcontractor ).

The recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts. If OMB Circulars and/or federal regulations are checked in Section 2 of these Terms and Conditions, subcontracting criteria are specified in the OMB Circulars incorporated by reference in this agreement and checked in Section 2.

The Commission will defer to the recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this agreement and any OMB Circulars incorporated by reference in this agreement and checked in Section 2.

Upon request, the recipient must submit to the Commission Project Manager a copy of all solicitations for services or products required to carry out the terms of this agreement, copies of the proposals or bids received, and copies of subcontracts executed. If a specific subcontractor was identified in the original grant application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the Commission Project Manager is required before substituting a new subcontractor. (See Section 10, Key Personnel and Key Subcontractors.)

The recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions which allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the recipient including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this agreement.

- Any additional requirements specified in the OMB Circulars incorporated by reference in this agreement and checked in Section 2.
- The Standard of Performance provisions specified in this agreement.
- Audit provisions regarding record retention specified in this agreement.
- Language conforming to the Indemnification provision in this agreement.
- Language conforming to the Intellectual Property provisions in this agreement.

Failure to comply with the above requirements may result in the termination of this agreement.

#### 10. KEY PERSONNEL AND KEY SUBCONTRACTORS

##### a. Key Personnel

**Key personnel** are employees of the recipient who are critical to the outcome of the project. For example, they may have expertise in the particular field or have experience that is not available from another source. Replacing these individuals may affect the outcome of the project. Key personnel, listed in the grant Budget, may not be substituted without the Commission Project Manager's approval. Such approval shall not be unreasonably withheld. Recipient may substitute all other personnel, with reasonable advance notification made to the Commission Project Manager.

##### b. Key Subcontractors

**Key subcontractors** are subcontractors or vendors to the recipient who are critical to the outcome of the project. As with key personnel, key subcontractors may have expertise in the particular field or have experience that is not available from another source. Replacing these subcontractors may affect the outcome of the project. An employee of the recipient's subcontractor or vendor may also qualify as key. Key subcontractors, listed in the grant Budget, may not be substituted without the Commission Project Manager's approval. Such approval shall not be unreasonably withheld. Recipient may substitute all other subcontractors, with reasonable advance notification made to the Commission Project Manager.

#### 11. BONDING AND INSURANCE

The recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the OMB Circulars incorporated by reference in this agreement and checked in Section 2 of these Terms and Conditions.

12. PERMITS AND CLEARANCES

The recipient is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies.

13. EQUIPMENT

Title to equipment acquired by the recipient with grant funds shall vest in the recipient. The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds and shall not encumber the property without Commission Project Manager approval. When no longer needed for the original project or program, the recipient shall contact the Commission Project Manager for disposition instructions.

If OMB Circulars and/or federal regulations are checked in Section 2 of these Terms and Conditions, recipient should refer to the circulars and/or federal regulations for additional equipment requirements.

14. TERMINATION

This project may be terminated for any reason set forth below.

a. With Cause

In the event of any breach by the recipient of the conditions set forth in this agreement, the Commission Policy Committee may, without prejudice to any of its legal remedies, terminate this agreement for cause upon five (5) days written notice to the recipient.

b. Without Cause

The Commission Policy Committee may, at its option, terminate this agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the recipient by certified mail, return receipt requested. In such event, the recipient agrees to use all reasonable efforts to mitigate the recipient's expenses and obligations hereunder. Also in such event, the Commission shall pay the recipient for all satisfactory services rendered and expenses incurred prior to such notice of



termination which could not by reasonable efforts of the recipient have been avoided, but not in excess of the maximum payable under this agreement.

15. TRAVEL AND PER DIEM

For purposes of payment, recipient's headquarters shall be considered the location of the recipient's office where the employees assigned responsibilities for this award are permanently assigned. Travel expenditures not listed in this section cannot be reimbursed.

Travel not listed in the Budget section of this agreement shall require prior written authorization from the Commission Project Manager. Recipient shall be reimbursed for authorized travel and per diem up to, but not to exceed, the rates allowed nonrepresented state employees. Where conflicts exist between this section and nonrepresented employee rates, this section shall take precedence. **University of California recipients or partners may use the Department of Personnel Administration approved rates for the University of California.**

Recipient must retain documentation of travel expenses in its financial records as follows:

- Expenses must be detailed using the current state rates listed below or University of California rates for University recipients;
- Expenses must be listed by trip including dates and times of departure and return;
- Receipts for travel expenses claimed must be retained by recipient (receipts are not required for travel meals or incidentals within current allowable rates); and
- A vehicle license number is required when claiming mileage, parking, or toll charges.

Questions regarding allowable travel expenses or per diem should be addressed to the Commission Project Manager.

#### CURRENT STATE RATES

The rates listed below will be in effect for the term of this agreement and apply to all travel, both in-state and out-of-state, unless and until the rates are revised.

- a. For travel necessary to the performance of this agreement, recipient shall be reimbursed as follows:
  - (1) Travel by common carrier, airline coach class or equivalent, in accordance with receipts or vouchers verifying expenditure. Receipts **must** be retained by recipient.

- (2) Travel by private or recipient-owned automobile will be reimbursed up to 31 cents per mile. If, however, travel by common carrier is more economical than by automobile, the rate for the common carrier will be reimbursed.
  - (3) Travel by private car to and from the common carrier will be reimbursed at 31 cents per mile, as stated above.
  - (4) Travel by rental car, if less expensive than taxi service. Receipts **must** be retained by recipient for car rental and gas for rental car. Note: insurance coverage is not reimbursable.
  - (5) Parking fees, taxi fees, and public transit fees may be reimbursed, without receipt, for any amount of \$10.00 or less. Amounts over \$10.00 must be validated with receipts for actual expenses. Business calls will be reimbursed up to \$5.00 without receipt. Amounts over \$5.00 must be validated with receipts for actual expenses.
- b. Per diem rates apply to travel more than 50 miles away from recipient's headquarters. The **date and time of departure and return** must be indicated on recipient's travel records in order to establish appropriate per diem rates. No receipts are required for travel meals or incidentals within the rates listed below. However, all meal receipts must be retained for audit by the state or IRS. Per diem is reimbursable as follows:
- (1) For a trip of less than 24 hours, recipient shall be reimbursed for actual costs up to the maximum allowance for breakfast, dinner, and lodging according to the following table if the recipient's travel time meets the criteria outlined below.

Breakfast:	Up to \$ 6.00, if began at or prior to 6 a.m. and terminated at or after 9 a.m.
Lunch:	Not reimbursed on a trip of less than 24 hours
Dinner:	Up to \$18.00, if began at or prior to 4 p.m. and terminated at or after 7 p.m.
Incidentals:	Not reimbursed on a trip of less than 24 hours
Lodging:	Up to \$84.00 plus taxes <b>with receipt</b> , except when lodging is in San Francisco, Alameda, San Mateo and Santa Clara counties, and Central/Western Los Angeles*, up to \$110.00 plus tax.

\* Los Angeles area within borders of Sunset Boulevard (North), Pacific Ocean (West), Imperial

Boulevard/Freeway 105 (South), and Freeways 110, 10 and 101 (East).

Lodging expenses must be substantiated with a receipt.

- (2) For trips lasting 24 hours or more, recipient will be reimbursed actual costs up to the maximum allowance for meals, lodging, and incidentals according to the following table for each complete 24-hour period, beginning with the time of departure.

For each 24-hour period:

Breakfast:	Up to \$ 6.00
Lunch:	Up to \$10.00
Dinner:	Up to \$18.00
Incidentals:	Up to \$ 6.00
Lodging:	Up to \$84.00 plus taxes with receipt, except when lodging is in San Francisco, Alameda, San Mateo and Santa Clara counties, and Central/Western Los Angeles*, up to \$110.00 plus tax.

\* Los Angeles area within borders of Sunset Boulevard (North), Pacific Ocean (West), Imperial Boulevard/Freeway 105 (South), and Freeways 110, 10 and 101 (East).

Lodging expenses must be substantiated with a receipt.

For the last fractional part of a travel period of more than 24 hours, recipient will be reimbursed the authorized allowance for meals provided that the expense was incurred and the travel time meets the following requirements:

Breakfast:	If travel began at or prior to 6 a.m. and terminated at or after 8 a.m.
Lunch:	If travel began at or prior to 11 a.m. and terminated at or after 2 p.m.
Dinner:	If travel began at or prior to 5 p.m. and terminated at or after 7 p.m.

16. STANDARD OF PERFORMANCE

- a Recipient, its subcontractors and their employees in the performance of recipient's work under this grant shall be responsible for exercising the degree of skill and care

required by customarily accepted good professional practices and procedures used in scientific and engineering research fields.

- b. The failure of a project to achieve the technical or economic goals stated in the Work Statement is not a basis for the Commission to determine that the work is unacceptable, unless the work conducted by the recipient or its subcontractors is deemed by the Commission to have failed the foregoing standard of performance.
- c. In the event that recipient or its subcontractor fails to perform in accordance with the foregoing standard of performance, the Commission Project Manager and the Contractor Project Manager shall seek to negotiate in good faith an equitable resolution satisfactory to both parties. If such a resolution cannot be reached, the parties shall work through the Commission's dispute resolution process described in the Disputes clause herein.
- d. Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

17. PAYMENT OF FUNDS

a. Payment Requests

Unless indicated otherwise in Special Conditions, the recipient may request payment from the Commission at any time during the term of this agreement, but no more frequently than monthly, although it is preferred that payment requests be submitted with the quarterly progress reports.

Payments will generally be made on a reimbursement basis for recipient expenditures, i.e., after the recipient has paid for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

As a general rule, advance payments are not allowed. The Commission, at its sole discretion, may honor advance payment requests if warranted by compelling need. Advance payments shall only be made upon the satisfaction of conditions intended to protect grant funds from loss or misuse, including (1) depositing all advance payments into a separate interest-earning account; (2) reporting interest earned on advance payments to the Commission Project Manager; (3) the accounting of all advance payments within a timeframe specified by the Grants and Loans Office; (4) returning all unused advance payments and interest or portion thereof, within 60 days of the termination of this agreement; and (5) other conditions as specified by the Grants and Loans Office.

Funds in this award have a limited period in which they must be expended. All recipient expenditures must occur prior to the end of the term of this agreement.

b. Payment Request Format

A request for payment shall consist of, but is not limited to:

- 1) An invoice that is a **list** of actual expenses incurred during the billing period. Backup information is not required at the time of invoice submittal, but will be required at time of audit. (See Audit clauses.) Unless specified otherwise in Special Conditions, the invoice list must include documentation of expenditures consistent with the grant Budget, as follows:
  - a) Date prepared, grant number, recipient's Federal ID number, and billing period;
  - b) Recipient's actual labor expenditures, including hourly labor rates by individual, hours worked, and benefits (fully loaded rates may only be used if fully loaded rates are included in the grant Budget);
  - c) Operating expenses, including travel, equipment, supplies, and other;
  - d) Subcontractor invoices;
  - e) Overhead/indirect;
  - f) Match fund expenditures, and
  - g) By Budget line item (cost component) category, list budgeted amount, billed to date, current billing, and balance of funds.
- 2) A progress report that documents evidence of progress, which includes written progress reports and products prepared by the Recipient as detailed in the Work Statement.

The Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that recipient sends a hardcopy the same day.

Recipient shall submit all invoices to the following address:

California Energy Commission  
Accounting Office  
PIER Grant Program  
1516 Ninth Street, MS-2  
Sacramento, CA 95814

c. Release of Funds

Each invoice is subject to Commission Project Manager approval. The Commission Project Manager will not process any payment request during the agreement term if the following conditions have not been met:

- All required reports have been submitted and are satisfactory to the Commission Project Manager.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the recipient and copies have been received by the Commission Project Manager.
- All products due have been submitted and are satisfactory to the Commission Project Manager.
- Other prepayment conditions as may be required by the Commission Project Manager have been met. Such conditions will be specified in writing ahead of time, if possible.

Payments shall be made to the recipient only for undisputed invoices. An undisputed invoice is an invoice executed by the recipient for project expenditures, that meets all payment conditions of the grant, and for which additional evidence is not required to make payment.

d. Indirect Costs/Overhead/Facilities and Administration Costs (F&A)

If the recipient has an approved indirect cost/overhead/F&A rate by their cognizant Federal Audit Agency, recipient's indirect costs will be reimbursed in accordance with those rates. For University of California recipients, rates will be reimbursed in accordance with rates approved by the University's cognizant Federal Agency and as specified in the University's operating guidance memo for current campus indirect cost rates.

e. Retention

It is the Commission's policy to retain 10 percent of any payment request or 10 percent of the total Commission award at the end of the project. After the project is complete the recipient must submit a completed payment request form requesting release of the retention. The Commission Project Manager will review the project file and, when satisfied that the terms of the funding agreement have been fulfilled, will authorize release of the retention.

f. State Controller's Office

Payments are made by the State Controller's Office.



18. RECORDKEEPING, COST ACCOUNTING, AND AUDITING

a. Cost Accounting

Recipient agrees to keep separate, complete, and correct accounting of the costs involved in completing the grant and match funded (if any) portion of this project. The Commission or its agent shall have the right to examine recipient's books of accounts at all reasonable times to the extent and as is necessary to verify the accuracy of recipient's reports.

b. Accounting Procedures

The recipient's costs shall be determined on the basis of the recipient's accounting system procedures and practices employed as of the effective date of this grant, provided that the recipient shall use generally accepted accounting principles and cost reimbursement practices. The recipient's cost accounting practices used in accumulating and reporting costs during the performance of this grant shall be consistent with the practices used in estimating costs for any proposal to which this grant relates; provided that such practices are consistent with the other terms of this grant and provided, further, that such costs may be accumulated and reported in greater detail during performance of this grant. The recipient's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this grant.

c. Allowability of Costs

1) Allowable Costs

The costs for which the recipient shall be reimbursed under this grant include all costs, direct and indirect, incurred in the performance of work that are identified in the grant Budget. Costs must be incurred within the term of the grant. Factors to be considered in determining whether an individual item of cost is allowable include (i) reasonableness of the item, (ii) allocability of the item to the work, (iii) applicable federal OMB circulars and/or federal regulations checked in Section 2 of these Terms and Conditions, and (iv) the other terms and conditions of this grant.

2) Unallowable Costs

The following is a description of some specific items of cost that are unallowable; provided, however, that the fact that a particular item of cost is not included shall not mean that it is allowable. Details concerning the allowability of costs are available from the Commission's Accounting Office.

- a) Profit or Fees, Contingency Costs, Imputed Costs, Fines and Penalties, Losses, and Excess Profit Taxes are unallowable.
- b) The Commission will pay for state or local sales or use taxes on grant expenditures. The State of California is exempt from Federal excise taxes.

- 3) Except as provided for in this grant, recipient shall use the federal OMB circulars and/or federal regulations checked in Section 2 of these Terms and Conditions in determining allowable and unallowable costs.

d. Audit Rights

Recipient shall maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this grant. The Commission, an agency of the state or, at the Commission's option, a public accounting firm designated by Commission, may audit such accounting records at all reasonable times with prior notice by Commission. Commission shall bear the expense of such audits. It is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by Commission of the recipient's final invoice. However, performance of any such interim audits by the Commission does not preclude further audit.

Recipient agrees that the Commission, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this grant. Recipient agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

Further, recipient agrees to include a similar right of the state to audit records and interview staff in any subcontract related to performance of this grant.

e. Refund to Commission

If Commission determines, that any invoiced and paid amounts exceed the actual allowable incurred costs, recipient shall repay such amounts to Commission within thirty (30) days of request or as otherwise agreed by the Commission and recipient.

If Commission does not receive such repayments, the Commission shall be entitled to withhold further payments to the recipient or seek repayment from the recipient.

f. Audit Cost

The cost of the audit shall be borne by the Commission except when the results of the audit reveal an error detrimental to the Commission exceeding more than ten percent (10%) or \$5,000 (whichever is greater) of 1) the amount audited, or 2) if a royalty audit, the total royalties due in the period audited. Recipient shall pay the refund as specified in e. Refund to Commission, and recipient agrees to reimburse Commission for reasonable costs and expenses incurred by the Commission in conducting such audit.

g. Match or Cost Share (match)

If the grant Budget includes match, the recipient's commitment of resources, as described in this agreement, is a required expenditure for receipt of Commission funds. Grant funds will be released only if the required match percentages are expended. The recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and report on match expenditure on the recipient's request for payment.

19. INDEMNIFICATION

The paragraph(s) checked below apply to this grant award.

\_\_\_\_\_ All recipients other than University of California

- a. The recipient agrees to indemnify, defend, and save harmless the state, its officers, agents, and employees from any and all claims and losses accruing or resulting to recipient and to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses

accruing or resulting to any person, firm, or corporation who may be injured or damaged by the recipient in the performance of this agreement.

\_\_\_\_\_ University of California recipients

- a. Recipient shall defend, indemnify and hold the State of California and its agencies, their respective officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys fees, or claims for injury or damages arising out of the performance of this agreement but only in proportion to and to the extent such liability, loss, expense, attorneys fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of recipient, its officers, agents or employees.
- b. The Commission shall defend, indemnify and hold recipient, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys fees, or claims for injury or damages arising out of the performance of this agreement but only in proportion to and to the extent such liability, loss, expense, attorneys fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the State of California, its officers, agents or employees.

20. DISPUTES

In the event of a grant dispute or grievance between the recipient Project Manager and Commission Project Manager, the parties shall use any or all of the following procedures:

a. Commission Dispute Resolution

If the Commission Project Manager and the recipient Project Manager cannot resolve a grant dispute or grievance, recipient Project Manager and Commission Project Manager shall each prepare a package in writing stating the issues in dispute, the legal authority or other basis for their respective positions and the remedy sought. The packages must be submitted to the Commission PIER Dispute Resolution Committee. The Commission Project Manager will notify the recipient Project Manager of the current Committee members. The Committee shall make a determination on the problem within ten (10) working days after receipt of the package.

If recipient disagrees with the Committee's decision, recipient may appeal to the full Commission at a regularly scheduled business meeting. The Committee will provide the recipient with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

Recipient shall continue with its responsibilities under this grant during any dispute.

b. Binding Arbitration

Should the Commission's Dispute Resolution procedure identified in Paragraph a. above fail to resolve a grant dispute or grievance to the satisfaction of the recipient, the parties must mutually agree to have the dispute or grievance resolved through binding arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. One (1) arbitrator who is an expert in the particular field of the dispute or grievance shall resolve the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. The decision rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The demand for arbitration shall be made no later than six (6) months after the date of the grant's termination, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of grant funds. Both parties must agree, in writing, to utilize grant funds to pay for arbitration costs.

21. WORKERS' COMPENSATION INSURANCE

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this agreement, and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.
- b. If recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.

22. CONFIDENTIALITY

- a. Determination

The Commission Executive Director makes the final determination of confidentiality. In the event there is a disagreement over the items to be delivered under the grant, the parties shall use the Disputes clause. Those items to be delivered as confidential shall be subject to the Commission Executive Director's determination of confidentiality. If the recipient wishes to appeal the Executive Director's determination, the appeal shall be made to the full Commission. If the recipient disagrees with this determination, the recipient may seek judicial review as per Title 20 CCR 2501, et seq.

The paragraph checked below applies to this agreement.

\_\_\_ The Commission Project Manager and the recipient will identify pre-existing confidential or proprietary items to be delivered under this grant.

**Or**

\_\_\_ The recipient has not identified any confidential or proprietary items to be delivered under this grant.

**Or**

\_\_\_ The Commission agrees to keep confidential the items listed in Exhibit \_\_\_.

- b. Public and Confidential Products

Only those items specifically listed in Exhibit \_\_\_ or in a subsequent determination of confidentiality qualify as confidential products. All products including, but not limited to, progress reports, task products and the Final Report shall not contain confidential information except when the Commission Project Manager and the recipient deem it necessary to include confidential information in a product. In such

event, the recipient shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Commission's confidential records.

c. Future Confidential Information

The recipient and the Commission agree that during this grant, it is possible that the recipient may develop additional data or information that the recipient considers to be protectable as confidential information. The Commission Project Manager shall provide a copy of the Commission Application for Confidential Designation to the recipient Project Manager. Recipient must list all items and information along with justification for confidentiality and submit the application to the Commission Project Manager. The Commission Executive Director makes the final determination of confidentiality. Such subsequent determinations will be added to Exhibit \_\_\_\_.

d. Identifying and Submitting Confidential Information

All confidential information submitted by the recipient shall be marked Confidential on each document containing the confidential information and delivered in a sealed package to the Commission Grants and Loans Officer. The Commission Grants and Loans Officer will notify the Commission Project Manager that the confidential information has been received and is in the Grants and Loans Office for review. The confidential information will only be available to those persons authorized by the Executive Director.

23. INTELLECTUAL PROPERTY ITEMS DEVELOPED PRIOR TO THIS GRANT

a. The Commission makes no claim to intellectual property that existed prior to this grant and was developed without Commission funding.

b. The paragraph checked below applies to this agreement.

\_\_\_\_ The recipient gives notice that the items listed in Exhibit E have been developed without Commission funding and prior to the start of this contract. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this contract, may be necessary if Commission funds are used to further develop the listed intellectual property. This information will assist the parties make an informed decision regarding intellectual property rights and possible repayment obligations.

**Or**



\_\_\_\_ The recipient has not identified any pre-existing intellectual property.

24. RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY

a. Commission's Rights in Products

Products and reports specified for delivery to the Commission under this grant shall become the property of the Commission. The Commission may use, publish, and reproduce the products and reports subject to the provisions of subparagraph c.

b. Rights in Technical, Generated, and Product Data

1) Recipient's Rights

All data (i.e., technical, generated and product data) produced under this grant shall be the property of the recipient, limited by the license retained by the Commission in 2) below, and the rights the Commission has in products specified above in a).

2) Commission's Rights

Recipient shall provide the Commission with a copy of all technical, generated and product data produced under the grant. Recipient does not have to copy and submit data the Commission Project Manager has identified as being unusable to the Commission and the PIER program. For instance, some data may not warrant routine copying and shipping because the raw data is too disaggregated or voluminous for practical application. Retention of such data at the recipient's facility for inspection, review and possible copying by the Project Manager is expected to be a more efficient use of Commission staff and the recipient's time and efforts.

For all data (technical, generated and deliverable) produced under this grant, the Commission retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the data, subject to the provisions of subparagraph C.

c. Limitations on Commission Disclosure of Recipient's Confidential Records

1) Data provided to the Commission by recipient, which data the Commission has not already agreed to keep confidential and which recipient seeks to have designated as confidential, or is the subject of a pending application for

confidential designation, shall not be disclosed by the Commission except as provided in Title 20 CCR Sections 2506 and 2507 (or as they may be amended), unless disclosure is ordered by a court of competent jurisdiction.

- 2) It is the Commission's intent to use and release project results such as products and data in a manner calculated to further PIER while protecting proprietary or patentable interests of the parties. Therefore, the Commission agrees not to disclose confidential data or the contents of reports containing data considered by recipient as confidential, without first providing a copy of the disclosure document for review and comment by recipient. Recipient shall have no less than 10 working days for review and comment and, if appropriate, to make an application for confidential designation on some or all of the data. The Commission shall consider the comments of the recipient and use professional judgment in revising the report, information or data accordingly.

d. Exclusive Remedy

In the event the Commission intends to publish or has disclosed data the recipient considers confidential, the recipient's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, Sacramento, California.

e. Waiver of Consequential Damages

**IN NO EVENT WILL THE ENERGY COMMISSION BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY FOR THE DISCLOSURE OF RECIPIENT'S CONFIDENTIAL RECORDS, EVEN IF THE ENERGY COMMISSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE ENERGY COMMISSION WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.**

- f. Limitations on Recipient Disclosure of Grant Data, Information, Reports and Records
- 1) Recipient will not disclose the contents of the final or any preliminary product or report without first providing a copy of the disclosure document for review and comment to the Commission Project Manager. The recipient shall consider the comments of the Commission Project Manager and use professional judgment in revising the reports, information or data accordingly.
  - 2) After any document submitted has become a part of the public records of the state, recipient may, if it wishes to do so at its own expense, publish or utilize the same, but shall include the legal notice stated above.
  - 3) Notwithstanding the foregoing, in the event any public statement is made by the Commission as to the role of recipient or the content of any preliminary or Final Report of recipient hereunder, recipient may, if it believes such statement to be incorrect, state publicly what it believes is correct.
  - 4) No record that is provided by the Commission to recipient for recipient's use in executing this grant and which has been designated as confidential, or is the subject of a pending Application for Confidential Designation, except as provided in Title 20, CCR Sections 2506 and 2507, shall be disclosed, unless disclosure is ordered by a court of competent jurisdiction (Title 20 CCR Section 2501, et seq.). At the election of the Commission Project Manager, the recipient, its employees and any subcontractors shall execute a Confidentiality Agreement, supplied by the Commission Project Manager.

- 5) Recipient acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this grant will be informed about the restrictions contained herein and to abide by the above terms.

g. Proprietary Data

Proprietary data owned by the recipient shall remain with the recipient throughout the term of this grant and thereafter. The extent of Commission access to the same and the testimony available regarding the same shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable hereunder.

h. Preservation of Data

Any data which is reserved to the recipient by the express terms hereof, and pre-existing proprietary or confidential data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any product hereunder, shall be preserved by the recipient at the recipient's own expense for a period of not less than three years after receipt and approval by the Commission of the Final Report herein.

i. Destruction of Data

Before the expiration of three years and before changing the form of or destroying any such data, the recipient shall notify Commission of any such contemplated action and Commission may, within thirty (30) days after said notification, determine whether it desires said data to be further preserved. If Commission so elects, the expense of further preserving said data shall be paid for by the Commission. Recipient agrees that Commission may at its own expense, have reasonable access to said data throughout the time during which said data is preserved. Recipient agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said data or, at Commission's expense, to furnish such competent witnesses.

j. Patent Rights

Patent rights for subject inventions will be the property of the recipient, subject to the Commission retaining a no-cost, nonexclusive, nontransferable, irrevocable royalty-free, worldwide perpetual license to use or have practiced for or on behalf of the State of California the subject invention(s) for governmental purposes.

Recipient must obtain agreements to effectuate this clause with all persons or entities, except for the U.S. Department of Energy (DOE), obtaining ownership interest in the patented subject invention(s). Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this provision.

k. Commission's Rights to Invention.

Recipient and all persons and/or entities obtaining an ownership interest in subject invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a subject invention, the following statement:

"THIS INVENTION WAS MADE WITH STATE OF CALIFORNIA SUPPORT UNDER CALIFORNIA ENERGY COMMISSION GRANT NUMBER \_\_\_\_\_. THE ENERGY COMMISSION HAS CERTAIN RIGHTS TO THIS INVENTION."

l. Copyrights

- 1) Copyrightable material first produced under this grant shall be owned by the recipient, limited by the license granted to the Commission in 2) below.
- 2) Recipient agrees to grant the Commission a royalty-free, no-cost nonexclusive, irrevocable, nontransferable worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this grant.
- 3) Recipient will apply copyright notices to all products using the following form or such other form as may be reasonably specified by Commission.

©[YEAR OF FIRST PUBLICATION OF PRODUCT],  
[THE COPYRIGHT HOLDER'S NAME].  
ALL RIGHTS RESERVED.

4) Software

In the event software is developed that is not a product under the grant, recipient shall have the right to copyright and/or patent such software and grants the Commission a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, worldwide, perpetual license to produce and use the software, its derivatives and upgrades for governmental purposes.

m. Intellectual Property Indemnity

Recipient warrants that recipient will not, in its supplying of the work under this grant s work statement, knowingly infringe or misappropriate any intellectual property right of a third party, and that it will conduct a reasonable investigation of the intellectual property rights of third parties to avoid such infringement. Recipient will defend and indemnify Commission from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a deliverable infringes any patent, copyright, trade secret or other intellectual property right of any third party, or (ii) any third party claim arising out of the negligent or other tortious act(s) or omission(s) by the recipient, its employees, subcontractors or agents, in connection with or related to the products or the recipient s performance thereof under this contract.

25. ROYALTY PAYMENTS TO COMMISSION

The royalty provisions checked below apply to this grant.

\_\_\_ No royalty payments are anticipated from work performed under this agreement.

\_\_\_ In consideration of Commission providing funding to recipient, recipient agrees to pay Commission royalties on the terms and conditions hereinafter set forth.

- a. Recipient agrees to pay Commission a royalty of 1.5% (one and one-half percent) of the Sale Price on the sale of each and every project-related product or right.
- b. Recipient s obligation to make payments to Commission shall commence from the date project-related products or rights are first sold and shall extend for a period of fifteen years thereafter. Payments are payable in annual installments and are due the first day of March in the calendar year immediately following the year during which recipient receives gross revenues.
- c. Early Buyout. Recipient has the option of paying its royalty obligations to Commission without a pre-payment penalty, provided recipient makes the payment within two years from the date at which royalties are first due to Commission, in the lump sum amount equal to two (2) times the amount of funds drawn down on the contract.
- d. Recipient agrees not to make any sale, license, lease, gift or other transfer of any Project-Related Products and Rights with the intent of, or for the

purpose of, depriving Commission of royalties hereunder. Generally, this means that recipient will not make any sale, license, lease or other transfer of Project-Related Products and Rights for consideration other than fair market value. Further, recipient agrees that such activity constitutes breach of this grant and that recipient agrees to repay within 60 days the amount due under subparagraph c above (Early Buy out).

- e. Recipient acknowledges that a late payment of royalties owed to the Commission will cause the Commission to incur costs not contemplated by the parties. If a royalty payment is not paid when due, recipient agrees to pay the Commission a late fee equal to two percent (2%) of the payment due. Additionally, recipient agrees that royalty payments not paid within fifteen (15) days of the due date shall thereupon become debt obligations of recipient to the Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- f. Recipient shall maintain separate accounts within its financial and other records for purposes of tracking components of sales and royalties due to Commission under this grant. Recipient shall keep separate, complete, and correct account of the economic benefit(s) from project-related product(s) and right(s).
- g. Payments to Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting and Auditing clause.
- h. In the event of default hereunder, Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. The occurrence of any of the following events or conditions shall cause default under this grant:
  - 1) Recipient's failure to pay when due, any amount due and payable under the terms of this grant.

26. GENERAL PROVISIONS

a. Governing Law

It is hereby understood and agreed that this agreement shall be governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

The recipient, and the agents and employees of the recipient, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

c. Assignment

Without the written consent of the Commission in the form of a formal written amendment, this agreement is not assignable or transferable by recipient either in whole or in part.

d. Timeliness

Time is of the essence in this agreement.

e. Unenforceable Provision

In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be affected thereby.

f. Waiver

No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The Commission reserves the right to seek further written assurances from the recipient and its team that the work of the project under this agreement will be performed consistent with the terms of the agreement.



h. Change in Business

- (1) Recipient shall promptly notify the Commission of the occurrence of each of the following:
  - (a) A change of address.
  - (b) A change in the business name or ownership.
  - (c) The existence of any litigation or other legal proceeding affecting the project.
  - (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
  - (e) Receipt of notice of any claim or potential claim against recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.
- (2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the agreement to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original recipient, the Commission may terminate this agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this agreement for any reason. The provisions include, but are not limited to:

- Payments of Funds
- Equipment
- Change in Business
- Disputes
- Termination
- Recordkeeping, Cost Accounting, and Auditing
- Indemnification
- Confidentiality
- Right of Parties Regarding Intellectual Property
- Royalty Payments to Commission

27. CERTIFICATIONS & COMPLIANCE

a. Federal, State & Local Laws

Recipient shall comply with all applicable federal, state and local laws, rules and regulations.

b. Nondiscrimination Statement of Compliance

During the performance of this agreement, recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

c. DrugFree Workplace Certification

By signing this agreement, the recipient hereby certifies under penalty of perjury under the laws of the State of California that the recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- i) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).

- ii) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
  - The dangers of drug abuse in the workplace;
  - The person's or organization's policy of maintaining a drug-free workplace;
  - Any available counseling, rehabilitation, and employee assistance programs; and
  - Penalties that may be imposed upon employees for drug abuse violations.
- iii) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
  - Will receive a copy of the company's drug-free policy statement;
  - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the agreement or termination of the agreement or both, and the recipient may be ineligible for any future state awards if the Commission determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. National Labor Relations Board Certification (Not applicable to public entities)

Recipient, by signing this agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the recipient within the immediately preceding two year period because of the recipient's failure to comply with an order of a Federal Court which orders the recipient to comply with an order of the National Labor Relations Board.

e. Recycling Certification

The recipient shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Recipient may certify that the product contains zero recycled content.

f. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of \$100,000, the recipient acknowledges that:

- i) It recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- ii) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

g. Air or Water Pollution Violation

Under the state laws, the recipient shall not be:

- (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

h. Americans With Disabilities Act

By signing this agreement, recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

i. Union Activity

By signing this agreement, the recipient hereby certifies that recipient will not use grant funds for any expenses to assist, promote, or deter union organizing. Any recipient that makes expenditures to assist, promote, or deter union organizing shall

maintain records sufficient to show that state funds have not been used for those expenditures. (Government Code Section 16645.2)

## **Attachment 1**

### **Content and Format of Progress Reports**

#### ***General Guidelines***

Each Progress Report describes the progress made on all active tasks and subtasks. Progress is measured against the project/task/subtask objectives, schedule and budget in the grant. The primary purpose of this report is to keep the Commission's Project Manager informed about the work -- to report on products, budgets, and schedules which may need to be adjusted or to report trends which may be cause for changing the direction of the work or for abandoning it altogether.

What is progress? Progress does not necessarily mean completing a task. Consider preparatory work, such as developing a test procedure or ordering equipment, as progress too. Even failure is progress. When you run into a blind alley, say so. When you have *tentative* results or conclusions, say they are tentative. All interim tasks, obstacles and problems are part of moving toward the final results, conclusions, and recommendations. Overall, we are seeking *clear* results, which either prove or disprove a project/task/subtask basic hypothesis or theory.

Some repetition is inevitable and even desirable in progress reports. Progress Reports will be read by more than the Project Manager, and these other readers need a reminder of the purpose of the project/task/subtask and what happened the last time that progress was reported. The report should *briefly* bring them up to date on the why and what of the previous work, then focus on the current reporting period's progress, and lastly, *briefly* summarize anticipated future work.

#### ***Specific Directions***

Provide an overview of the fiscal status. Compare costs to date with the approved Budget. State whether the project is progressing within the approved Budget and discuss any proposed changes.

Please report on the status on a task-by-task basis. For each task, please indicate:

- What were the goals and objectives for the past reporting period?
- Its work status: not initiated yet; % completed; or completed
- Are you ahead of schedule, on schedule or behind schedule?
- What specific progress have you made? If detailed, lengthy technical descriptions, tables and/or charts of work content are necessary to relay progress, please include these as attachments to the progress report.
- Have you encountered any problems that will affect successful completion of the task? What actions have you taken to resolve the problem(s)?

- Have you discovered anything else that will materially change the objectives, course, cost or chance of the success? If so, what is it and what are its effects?
- What products were due during this reporting period, if any? What products are past due? What products are due within the next reporting period?
- What are the plans for the upcoming quarter?

### ***Progress Reporting Schedule***

Submit the Progress Report within 30 days after the end of the reporting period. Begin reporting once the grant has been executed and continue reporting until the Final Report has been approved by the Commission Project Manager.

**Attachment 1 cont.**  
**Example of Quarterly Progress Report**

**QUARTERLY PROGRESS REPORT**  
**July - September 1912**

Grant Number: PIR-00S-900  
Project Title: Assessment of Iceberg Properties in Dynamic Response to Titanic Impacts  
Project Period: July 1 — September 30, 1912  
Project Manager/  
Lead Investigator: Larry Green, University of the West  
Other Investigators: Mary Brown, University of the North  
John Black, University of the South

**Overview of fiscal status:**

[This section should compare costs to date with the approved Budget. State whether or not the project is progressing within the approved Budget.]

**Summary of what we planned to accomplish this quarter:**

[This is taken directly from the section on what we expect to accomplish during the next quarter from the last Quarterly Report]

**Summary of what we actually accomplished this quarter:**

[Concise description of major activities and accomplishments.]

**How we are doing compared to our plan:**

[Explain the differences, if any, between the planned and the actual accomplishments. Describe what needs to be done, if anything, to get back on track.]

**Significant problems or changes:**

[Describe any significant technical or fiscal problems. Request approval for significant changes in work scope, revised milestone due dates, changes in key personnel assigned to the project, or reallocation of budget cost categories. If none, include the following statement: Progress and expenditures will result in project being completed on time and within budget. ]

**What we expect to accomplish during the next quarter:**

[Concise description of major activities and accomplishments expected. This will be transferred to the next quarterly report.]



**Status of Work Statement Tasks:**

[This section should include the status of each Work Statement task and product. Highlight differences between actual and planned.]

**Sample**

Work Statement Task	Start Date		Due Date		Status (%)
	Planned	Actual	Planned	Actual	
Identify top 3 assessment candidates (Univ. North)	4/15/12	4/15/12	5/1/12	5/1/12	Done
Analyze experimental data (Univ. West)	5/1/12	<b>6/1/12</b>	1/1/13	<b>2/1/13</b>	<b>Off track 25%</b>